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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,883	03/24/2004	Paul Gait	N1055	5602

23456 7590 06/27/2006
WADDEY & PATTERSON
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/807,883

Applicant(s)

GAIT, PAUL

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrow et al (6561932). Morrow et al discloses

a throat for receiving a handle; a scoop distal from the throat; a pair of sidewalls extending from the throat to the scoop,

each sidewall having an inner edge, a length, an upper portion, a middle portion below the upper portion, and a lower portion below the middle portion, the pair of sidewalls separated by a distance, and wherein a portion of the length of the inner edge of each sidewall convexes inwardly toward the opposing sidewall and said portion of the length of the inner edge of each sidewall is convex from the upper portion to the middle portion and from the lower portion to the middle portion (fig 3, 6:55-65).

As to claim 16 : Morrow discloses curved sidewalls (fig 3).

As to claim 17 : Morrow discloses varying curvature along the length of the sidewalls (fig 3).

As to claim 18 : Morrow discloses an upper portion larger than a middle portion (fig 3).

As to claim 19 : Morrow discloses an lower portion larger than a middle portion (fig 3).

As to claim 20 : Morrow discloses a distance greater at the upper portion than the middle portion (fig 3).

As to claim 21 : Morrow discloses a distance greater at the lower portion than the middle portion (fig 3, 6:55-65).

As to claim 22 : See claim 15 rejection.

As to claim 23 : See claim 15 rejection.

Also,

Claims 15-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Grimes et al (602994). Grimes et al discloses a throat for receiving a handle; a scoop distal from the throat; a pair of sidewalls extending from the throat to the scoop, each sidewall having an inner edge , a length, an upper portion, a middle portion below the upper portion, and a lower portion below the middle portion, the pair of sidewalls separated by a distance, and wherein a portion of the length of the inner edge of each sidewall convexes inwardly toward the opposing sidewall and said portion of the length of the inner edge of each sidewall is convex from the upper portion to the middle portion and from the lower portion to the middle portion (fig 2,21).

As to claim 16 : Grimes discloses curved sidewalls (fig 2,21).

As to claim 17 : Grimes discloses varying curvature along the length of the sidewalls (fig 21).

As to claim 18 : Grimes discloses an upper portion larger than a middle portion (fig 2,21).

As to claim 19 : Grimes discloses an lower portion larger than a middle portion (fig 2,21).

As to claim 20 : Grimes discloses a distance greater at the upper portion than the middle portion (fig 21).

As to claim 21 : Grimes discloses a distance greater at the lower portion than the middle portion (fig 21).

As to claim 22 : See claim 15 rejection.

As to claim 23 : See claim 15 rejection.

Response to Arguments

Applicant's arguments filed 5/3/06 have been fully considered but they are not persuasive. The Morrow reference notes that the interior band (70) can be located anywhere on the inner surface. The placement of this band in the center of the sidewall would meet the existing claim limitations.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Chambers
Examiner
Art Unit 3711

June 20, 2006



EUGENE KIM
SUPERVISORY PATENT EXAMINER